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10/804,330	03/19/2004	Gregory S. Thoen	32643/101	7019
7590 Nixon Peabody LLP Clinton Square P.O. Box 31051 Rochester, NY 14603-1051				
			EXAMINER	
			SHU, HO T	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/804,330

**Applicant(s)**

THOEN, GREGORY S.

**Examiner**

HO SHIU

**Art Unit**

2457

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-36 are pending in this application. Claims 1, 8, 13, 20, and 25 were amended and claims 64-83 are newly added by applicant's amendment filed on 06/08/2009.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/08/2009 has been entered.

### ***Claim Objections***

3. With respect to claim 77. It seems that a typo has been written and the claim is suppose to depend off claim 25. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**5. Claims 1-2, 8, 10-14, 20, 22-26, 32, 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli et al. (Pub # US 2003/0110234 A1, hereinafter Egli) in view of Kjellberg et al. (US Pub # 2004/0054787, hereinafter Kj).**

6. With respect to claims 1, 13, and 25, Egli discloses a system for providing content to a client system, the system comprising ([0058], lines 4-7): an assessment system that obtains content presentation environment information associated with the client system ([0066], lines 1-4, [0068], lines 17-20), wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluation system ([0058], lines 7-12); and a content processing system that selects one of a plurality of versions of the content to send the client system using the obtained content presentation environment information ([0060], lines 1-6) but does not clearly disclose an assessment system that obtains from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluating system to obtain, from the client system, the content environment information at a time of a request for the content from the client system.

In the same field of endeavor, Kj discloses an assessment system that obtains from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on

an operating environment evaluation of the client system performed by an evaluating system to obtain, from the client system, the content environment information at a time of a request for the content from the client system ([0068], [0069], [0105]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Egli with an assessment system that obtains from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluating system to obtain, from the client system, the content environment information at a time of a request for the content from the client system as disclosed in KJ in order to determine what the exact capabilities of the device are directly. One of ordinary skill would have been motivated to incorporate the teachings with one another to establish a more efficient system by being able to find the best match content to the provision of the device.

7. With respect to claims 2, 14, and 26, it is rejected for the same reasons as claim 1 above. Egli discloses wherein the obtained content presentation environment information comprises a second identifier for a content transfer rate associated with the client system ([0102], lines 1-7, [0103], lines 5-8, client capabilities are defined inside the content-type tag by one or more capability tags). In addition, KJ discloses a first identifier for a content presentation application associated with the client system ([0068],

[0069]).

8. With respect to claims 8, 20, and 32, Egli discloses wherein the assessment system determines whether stored content presentation environment information is available for retrieval from the client system ([0059], lines 14-21, it is comparing to known device characteristic and capabilities), wherein the evaluation system evaluates the operating environment of the client system to obtain the content presentation environment information if the stored content presentation environment information is determined to be unavailable ([0066], lines 1-10, [0069], lines 11-15, client capabilities module (CCM) log 323 includes a record of any client devices that could not be identified or for which capabilities are not available).

In addition, KJ discloses wherein the assessment system determines whether stored content presentation environment information is available for retrieval from the client system, wherein the evaluation system evaluates the operating environment of the client system to obtain the content presentation environment information only if the stored content presentation environment information is determined to be unavailable ([0069], [0105])

9. With respect to claims 10, 22, and 34, Egli discloses a content delivery system that sends the selected content to the client system in response to a request from the client system, wherein neither the assessment system, the evaluation system, the content processing system, nor the content delivery system request any additional

information from the client system ([0068], lines 10-20, it requires information from the data store and not the client system itself).

10. With respect to claims 11, 23, and 35, Egli discloses the content delivery system sends the selected content at a content transfer rate that the selected content is formatted to be sent at ([0102], lines 1-7, [0107], lines 1-4, lines 15-18).

11. With respect to claim 12, 24, and 36, Egli discloses the content comprises at least one of video content, audio content, hypertext content and document content ([0065], lines 1-6).

12. With respect to claims 64, 70, and 77, Egli discloses, wherein the request comprises a user agent string ([0096], [0100]).

13. With respect to claims 65, 71, and 78, Egli discloses wherein the selected one of a plurality of versions are retrieved from a server memory associated with the system ([0060]).

14. With respect to claims 76 and 83, Egli discloses wherein the determining comprises interpreting a script embedded in a code embodying the content, and replacing the script with another script for displaying the content ([0031]).

**15. Claims 3-6, 15-18, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kj as applied to claims 1, 13, and 25 in view of Hurwitz (US Patent # 6,256,669 B1, hereinafter Hurwitz) and in further view of Hamalainen et al. (US Patent # 6,072,787, hereinafter Hama).**

16. With respect to claims 3, 15, and 27, Egli discloses the evaluation system performs the operating environment evaluation of the client system by determining at least one or more types or versions of one or more Web browsers associated with the client system ([0075], lines 1-8), one or more types or versions of one or more content presentation applications associated with the client system ([0064], lines 1-7, [0093], lines 1-9), and one or more types or versions of one or more operating systems associated with the client system ([0005], lines 14-17, [0059], lines 19-21, PDA loaded with Palm is a different operating system than a PDA with Windows CE).

However, Egli and Kj do not disclose one of a current content transfer rate for the client system.

In the same field of endeavor, Hurwitz discloses one of a current content transfer rate for the client system (summary of the invention, column 2, lines 14-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Egli and Kj with one of a current content transfer rate for the client system as disclosed in Hurwitz in order to have the capability to determine the bandwidth available (column 2, lines 7-9). One of ordinary skill in the art would have been motivated to incorporate the teachings with one



another to establish a more efficient system by being able determine the amount of the data received within a pre-selected period of time.

However, Egli, Kj, and Hurwitz do not clearly disclose determining two or more of a current content transfer rate for the client system.

In the same field of endeavor, Hama discloses two or more of a current content transfer rate for the client system (col. 3, lines 5-35).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli, Kj, and Hurwitz with two or more of a current content transfer rate for the client system as disclosed in Hama in order to determine the desired grade of service the mobile station is capable of being used and to ensure the continuity of data transfer. One of ordinary skill in the art would have been motivated to incorporate the teachings with one another to establish a more efficient system by determining the minimum transfer rate allowed and determining what grade of service is being provided.

17. With respect to claims 4, 16, and 28, it is rejected for the same reasons as claim 3 above. In addition, Hurwitz discloses the evaluation system determines the current content transfer rate for the client system by sending an operation execution request to the client system (summary of the invention, Column 2, lines 14-23) and calculating an amount of time taken by the client system to perform an operation associated with the operation execution request (column 4, lines 41-50), wherein the amount of time is measured from when the operation execution request is sent until the evaluation system

is notified that the client system completed performing the operation (summary of the invention, column 2, lines 14-23, column 4, lines 46-50).

18. With respect to claims 5, 17, and 29, it is rejected for the same reasons as claim 3 above. In addition, Hurwitz discloses the operation comprises rendering an image transmitted from the evaluation system to the client system (column 4, lines 51-57, lines 63-66).

19. With respect to claims 6, 18, and 30, Egli discloses wherein the one or more types of content presentation applications comprise at least one of a video presentation application, an audio presentation application, a hypertext document presentation application, and a document processing application ([0065], lines 1-6).

**20. Claims 7, 9, 19, 21, 31, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kj as applied to claims 1, 8, 13, 20, 25, and 32 and in further view of Eames et al. (US PUB # 2005/0015551 A1, hereinafter Eames).**

21. With respect to claims 7, 19, and 31, Egli discloses the content presentation environment information ([0059], lines 14-21).

However, Egli and Kj do not disclose it is stored at a location accessible to the client system.

In the same field of endeavor, Eames discloses it is stored at a location accessible to the client system ([0018], lines 1-9).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Egli and Kj with stored at a location accessible to the client system as disclosed in Eames in order to change/update information that the client deems necessary. One of ordinary skill in the art would have been motivated to incorporate the teachings with one another to establish a more controlled system so the client can change information.

22. With respect to claims 9, 21, and 33, Egli discloses the obtained content presentation environment information ([0066], lines 1-10, [0069], lines 11-15).

However, Egli and Kj do not disclose storing it at a location accessible to the client system.

In the same field of endeavor, Eames discloses storing it at a location accessible to the client system ([0018], lines 1-9).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Kj with storing it at a location accessible to the client system as disclosed in Eames in order to change/update information that the client deems necessary. One of ordinary skill in the art would have been motivated to incorporate the teachings with one another to establish a more controlled system so the client can change information.

**23. Claims 66-67, 72-73, and 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kj as applied to claims 1, 13, and 25 and in further view of Kumar (US Pub # 2003/0182195, hereinafter Kumar).**

24. With respect to claims 66, 72, and 79, Egli and Kj do not clearly disclose wherein the operating environment information evaluation comprises a determination of whether a cookie file is stored at the client system.

In the same field of endeavor, Kumar discloses wherein the operating environment information evaluation comprises a determination of whether a cookie file is stored at the client system ([0041], lines 25-32).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Kj with wherein the operating environment information evaluation comprises a determination of whether a cookie file is stored at the client system as disclosed in Kumar in order to be able to know the capability of the portable device. One of ordinary skill in the art would have been motivated to incorporate the teachings with one another to establish a more efficient system so the device does not have to send out the same information again.

25. With respect to claims 67, 73, and 80, it is rejected for the same reasons as claim 66, 72, and 79 above. In addition, Kumar discloses wherein the cookie file is retrieved, if stored at the client system, for subsequent requests for additional content from the

client system ([0041], lines 25-32)

**26. Claims 68, 74, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kj and in further view of Kumar and in further view of Greene et al (US Pub # 2002/0143861, hereinafter Greene).**

27. With respect to claim 68, Egli and Kj do not clearly disclose wherein the cookie file comprises information related to changing an operating environment information.

In the same field of endeavor, Greene discloses wherein the cookie file comprises information related to changing an operating environment information ([0053]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Kj with wherein the cookie file comprises information related to changing an operating environment information as disclosed in Greene in order to be able to determine whether a modification to the information is needed. One of ordinary skill in the art would have been motivated to incorporate the teachings with one another to establish a more efficient system since cookies are commonly used with web sites to identify numerous information about a client, client systems, authorization, etc.

28. With respect to claims 74 and 81, Egli and Kj do not clearly disclose optionally changing an operating environment information based on the retrieved cookie file.

In the same field of endeavor, Greene discloses optionally changing an operating environment information based on the retrieved cookie file ([0053]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Kj with optionally changing an operating environment information based on the retrieved cookie file as disclosed in Greene in order to be able to determine whether a modification to the information is needed. One of ordinary skill in the art would have been motivated to incorporate the teachings with one another to establish a more efficient system since cookies are commonly used with web sites to identify numerous information about a client, client systems, authorization, etc.

**29. Claims 69, 75, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kj and in further view of Risan et al (US Pub # 2005/0169467, hereinafter Risan).**

30. With respect to claims 69, 75, and 82, Egli and Kj do not disclose clearly wherein the obtained content presentation environment information comprises a Boolean value of indicative of an audio player or a video player stored on the client system.

In the same field of endeavor, Risan discloses wherein the obtained content presentation environment information comprises a Boolean value of indicative of an audio player or a video player stored on the client system ([0307], Boolean is the base of all modern digital electronics).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Kj with wherein the obtained content presentation environment information comprises a Boolean value of indicative of an audio player or a video player stored on the client system as disclosed in Risan in order to detect if a media player is present or not. One of ordinary skill in the art would have been motivated to incorporate the teachings with one another to establish a more efficient system so the system will know if the installation of a media player is necessary.

### ***Response to Arguments***

31. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- a. Chavez et al., US PUB # 2005/0068889, the method saves call state information to increase the natural network reliability by distributing the information. The method is highly scalable as clients store the call state information, and avoids the need for sending updated call information to a central

database or to alternate call controllers. The method is simple to implement and requires relatively few resources. The method do not require the clients to be capable of recognizing the content of the call state information files, and hence changes can be made to the structure and content of the files without requiring changes to the client.

b. Lee et al., US Patent # 6,658,167 B1, Reduces quantity of data forwarded between server and client. Increases bandwidth between server and client. Ensures customizing changed data by calculating based on modification data.

33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HO SHIU whose telephone number is (571)270-3810. The examiner can normally be reached on Mon-Thur (8:30am - 4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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